

CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

LSA Document #17-565

COAL COMBUSTION RESIDUALS LANDFILLS AND SURFACE IMPOUNDMENTS

PURPOSE OF NOTICE

A First Notice of Comment Period was published on December 6, 2017, in the Indiana Register (DIN: [20171206-IR-329170565FNA](#)) for amendments to rules at [329 IAC 3.1-6-2](#) and [329 IAC 10](#) concerning landfills and surface impoundments for coal combustion residuals (CCR). In response to a request from an interested party, the Indiana Department of Environmental Management (IDEM) is providing an additional 30 days for submission of comments on the rulemaking. Comments submitted to IDEM from the original First Notice of Comment Period are considered part of the formal written comment period. With this notice, IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: December 6, 2017, Indiana Register (DIN: [20171206-IR-329170565FNA](#)).

CITATIONS AFFECTED: [329 IAC 3.1-6-2](#); [329 IAC 10](#).

AUTHORITY: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-19-3-1](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

IDEM is initiating this rulemaking to propose additional standards for coal combustion residuals units that implement the federal standards at 40 CFR 257, Subpart D, and also include Indiana-specific standards that will be at least as protective as the federal standards. This rulemaking is a follow-up to LSA Document #16-217, which incorporated by reference the federal standards for new and existing coal combustion residuals surface impoundments at 40 CFR 257, Subpart D. The federal standards were promulgated in a final rule published in the Federal Register (FR) on April 17, 2015, at 80 FR 21302, and became effective on October 14, 2015. LSA Document #16-217 incorporated by reference the federal standards for coal combustion residuals surface impoundments to meet compliance deadlines, ensure regulatory oversight, and take enforcement action, if necessary.

In addition, the adoption of LSA Document #16-217 allowed for Indiana to implement alternative compliance schedules if the United States Environmental Protection Agency (U.S. EPA) approved changes to Indiana's Solid Waste Management Plan. After the adoption of LSA Document #16-217, IDEM submitted the amended Solid Waste Management Plan to U.S. EPA, and IDEM received approval for the amended plan on March 7, 2017. In the Solid Waste Management Plan, IDEM stated an intent to propose standards that are consistent with and at least as stringent as the federal standards for coal combustion residuals landfills and surface impoundments.

At the time that the federal standards for coal combustion residuals were promulgated, Indiana statute at [IC 13-19-3-3](#) included prohibitions on adopting rules for certain types of disposal and use of coal combustion residuals. Without amendment, these prohibitions would have prevented Indiana from adopting rules that are consistent with the federal standards for coal combustion residuals. To resolve this situation, the Indiana General Assembly passed Indiana Public Law 1-2017, which amended [IC 13-19-3-3](#) to allow the Environmental Rules Board to adopt standards for coal combustion residuals that are consistent with 40 CFR 257, Subpart D.

After the promulgation of the U.S. EPA final rule for coal combustion residuals on April 17, 2015, the United States Congress passed the Water Infrastructure Improvement for the Nation Act of 2016 (WIIN Act). Section 2301 of the WIIN Act, codified at 42 U.S.C. 6945(d), provides the opportunity for states to seek U.S. EPA approval to operate a state permit program for the coal combustion residuals units that is at least as protective as the federal standards. This rulemaking proposes to establish a state-operated permit program for coal combustion residuals units that is consistent with federal standards and also includes state-specific standards. The state permit program will operate in lieu of a permit program implemented by U.S. EPA that strictly adheres to federal standards without offering state-specific flexibilities and alternatives. After adoption of this rulemaking, IDEM can submit the state permit program to U.S. EPA for approval, in accordance with provisions of Section 2301 of the WIIN Act.

As a result of the adoption of LSA Document #16-217, U.S. EPA's approval of the amended Solid Waste Management Plan, the enactment of Public Law 1-2017, and the provisions for a state-operated permit program in the WIIN Act, IDEM is initiating this rulemaking to propose additional changes to the coal combustion residuals standards, offer compliance alternatives and flexibility while still being at least as protective as the federal

standards at 40 CFR 257, Subpart D, and establish a permit program for coal combustion residuals units.

Indiana rules at [329 IAC 10](#) currently permit regulated entities to dispose of coal combustion residuals in restricted waste sites. These requirements were created before promulgation of the federal standards for coal combustion residuals units and differ from the federal standards in some cases. IDEM will conform the existing permit program and requirements for restricted waste sites to align with the coal combustion residuals standards at 40 CFR 257, Subpart D. IDEM plans to implement the recently promulgated federal coal combustion residuals landfill standards while also resolving inconsistencies between the current Indiana standards and the federal standards. The proposed rule amendments will maintain Indiana-specific requirements for the restricted waste sites that are not included in the federal coal combustion residuals landfill standards, but are at least as protective as the federal standards. These Indiana-specific requirements may include permit application requirements, location restrictions, operating criteria, closure and post-closure, financial assurance, record keeping, and notification. In addition, IDEM will supplement some of the federal coal combustion residuals landfill standards with long-established, more specific solid waste landfill design and construction standards that offer clarity and site-specific flexibility. These site-specific flexibilities may include alternative liner, cover, and leachate collection system design, alternative requirements for ground water monitoring and protection, corrective action, and site-specific operational requirements.

While IDEM plans to amend the restricted waste sites requirements to be consistent with the federal coal combustion residuals standards, the restricted waste sites requirements for Type I through Type IV restricted wastes will not be amended in this rulemaking. The amendments proposed for this rulemaking will only apply to solid wastes that are classified as coal combustion residuals. IDEM plans to propose new rules in [329 IAC 10](#) that will only include the standards for coal combustion residuals units. The other existing requirements for Type I through Type IV restricted wastes will remain the same.

For coal combustion residuals surface impoundments, IDEM may consider site-specific compliance alternatives and flexibilities to the standards that were adopted in LSA Document #16-217. Because of the compliance deadlines and requirements in 40 CFR 257, Subpart D, many owners and operators have initiated closure for inactive and existing coal combustion residuals surface impoundments, rather than continue operation of these units. IDEM anticipates that owners and operators will not construct new surface impoundments or expand existing surface impoundments. However, IDEM has received feedback from interested parties about providing the opportunity for site-specific compliance alternatives and flexibilities to some of the federal standards for surface impoundments, while maintaining standards that are at least as protective as the federal standards. In addition, IDEM may need to permit activities at surface impoundments as the facilities phase out coal combustion or the generation of wet coal combustion residuals and move towards closure of surface impoundments.

The main entities that will be affected by this rulemaking are the owners and operators of units for coal combustion residuals generated from the combustion of coal at electric utilities and independent power producers. Also affected are owners and operators of units for coal combustion residuals generated at active electric utilities and independent power producers, but are located off-site from the generating facility.

IDEM is not adding, deleting, or changing the purpose of the rulemaking as published at DIN: [20171206-IR-329170565FNA](#). The purpose of this notice is to extend the comment period end date by an additional 30 days.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 329 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #17-565 Coal Combustion Residuals Landfills and Surface Impoundments
Dan Watts
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to dwatts1@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments**

will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than February 23, 2018. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel (317) 234-5345 or (800) 451-6027 (in Indiana).

Christine Pedersen, Section Chief
Rules Development Branch
Office of Legal Counsel

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